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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

REAGAN, JAMES A

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/450,308

Applicant(s)

MAUDLIN, STUART C.

Examiner

James A. Reagan

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

1. This action is in response to the amendment received on 31 October 2002.
2. Claim 31 has been amended (paper #7).
3. Claims 1-44 have been examined.

Affidavit Submission By Applicant

4. The affidavit (Exhibits **A** and **B**) filed on 31 October 2002 under 37 CFR 1.131 has been considered but is ineffective to overcome the Ausubel (US 6,026,383) reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Ausubel (US 6,026,383) reference. Although Exhibit **A** discusses an auction concept, there is not evidence that the Applicant's concept was reduced to practiced on or about the claimed date of conception. Moreover, there seems to be no evidence that the meeting referred to by Exhibit **A** even discussed the concepts of the Applicant's concept, but shows merely and intention to. In addition, although Exhibit **B** discloses Vickery/Dutch auction techniques, apparently already old and well-known in the financial community and academia, Exhibit **B** also shows no evidence that the Applicant's concept was reduced to practiced on or about the claimed date of conception.

The evidence submitted is insufficient to establish Applicant's alleged actual reduction to practice of the invention in this country or a NAFTA or WTO member country after the effective date of the Ausubel (US 6,026,383) reference. Although both Exhibits **A** and **B** discuss the concept and the intention of discussing the concept, there is no proof that a discussion ensued, and there is no proof that the concept was practiced. Furthermore, the affidavit fails to establish possession of either the whole claimed invention or something falling within the claim (such as a species of a claimed genus), in the sense that the claim as a whole reads on it. See *In re Tanczyn*, 347 F.2d 830, 146 USPQ 298 (CCPA 1965). Exhibits **A** and **B** show no such possession. Moreover, the affidavit, as submitted, contains no facts showing the completion of the invention commensurate with the extent of the invention as claimed or shown in Ausubel (US 6,026,383). For these reasons, the affidavit is insufficient.

Response to Arguments

5. Applicant's arguments with respect to claims 1-44 have been considered but are moot in view of the new ground(s) of rejection.
6. The following is a **Non-Final Rejection** of all claims and associated limitations pending in the current application as amended in paper #7.

Examiner's note: Examiner has pointed out particular references contained in the prior art of record in the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the *entire* reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Claim Rejections - 35 USC § 101

7. Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claim 1 cites a method, but does not disclose any method steps for carrying out of the method. Claim 1 is therefore, the limitation of claim 1 is merely an abstract thought process, which fail to produce a tangible, concrete, and useful result.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausubel et al (Vickrey Auctions with Reserve Pricing, June 28, 1999) in view of Ausubel (US Patent No. 6,026,383, herein referred to as Ausubel '383), further in view of Dutch Auction Glossary (1997-1999 Cyberinvest.Com).

Claim 1:

Ausubel et al. shows a method of optimizing a Vickrey auction transaction to maximize revenue and profit to the seller, by withholding supply based on a market-derived reserve price calculated from buyer's bids (page 1, paragraph 1). Ausubel '383 provides supporting evidence. Neither Ausubel nor Ausubel '383 specifically disclose that the intent of the method is to maximize revenue and profit. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the Vickrey-type auction techniques to maximize profit and revenue because that is the goal of any rational business strategy.

In addition, based on the testimony by the Applicant in the affidavit filed on 31 October 2002 (paper #7) Exhibit B, the Examiner recognizes that techniques of the Dutch auction are known to be the same as the Vickrey auction. Dutch

Auction Glossary (1997-1999 Cyberinvest.Com), is hereby incorporated as supporting evidence.

Claim 2:

Ausubel et al. demonstrates the economic theory of Vickery auctions with reserve pricing, including recording auction parameters and calculating an optimum selling price; announcing the auction and collecting bids; sorting receiving bids; processing bids to determine the optimum selling price; selecting the winning bids (Ausubel, page 5, section 3). However, because Ausubel et al. is a theoretical research paper it does not show a physical system for carrying out a Vickrey auction with reserve pricing. Examples of on-line, automated auctions are prevalent in the art as noted by the applicant (page 6, line 14). The Ausubel '383 patent shows, in figures 1-4 and related text) the steps of: establishing a system for recording auction parameters and calculating a selling price and a communications network for announcing the auction and collecting bids (column 2, lines 61-67); sorting receiving bids (column 9, lines 57-59); processing bids to determine the selling price (Fig. 2b and related text); selecting the winning bids and notifying bidders of whether they won or lost based upon the calculated optimum selling price (column 7, lines 15-17). It would have been obvious to one of skill in the art at the time of the invention to use the automated auction system of '383 to implement the theoretical auction of Ausubel et al. because the automated auction system allows the auction to be conducted swiftly even if the bidders are not located on-site ('383, column 3, lines 33-35).

Claim 3:

The Ausubel '383 patent shows, in figures 1-4 and related text, the item being offered (column 6, lines 15-17); whether at market bids (high bid) will be accepted (column 9, lines 12-13 & 37-37); whether there is an announced reserve price, and if so, what it is; whether there is an unannounced reserve price, and if so, what it is (column 9, lines 13-13); whether bids should have a minimum quantity, and if so, what it is; whether bids should have a maximum quantity and if so what it is (column 9, lines 20-21); whether to announce the quantity available for sale (column 6, lines 15-17); the procedure for submitting bids, whether bids may withdrawn prior to the close of the auction, and the procedure for withdrawing bids (column 6, lines 60-62; column 7, lines 8-12); delivery requirements (column 6, lines 3-5) wherein one of skill in the art will appreciate that it is well known in the art of on-line purchasing to include buyer delivery information with buyer identifying information; the closing date and time of the auction (column 6, lines 52-53).

Claim 4:

The Ausubel '383 patent shows, in figures 1-4 and related text, announcing the selected auction parameters (column 6, lines 15-27; collecting and recording bids containing (column 6, lines 63-65): the identity of the bidder (column 6, lines 63-65); quantity bid for (column 7, line 1) pricing information (column 6, line 63); and whether bidder will accept partial quantity, according to

the procedures selected and announced (column 8, lines 5-7); rejecting nonconforming bids and noting any bid withdrawals (column 7, lines 8-12).

Claim 5:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of sorting and consolidating all at market bids and all price bids other than those less than the reserve price, wherein the price bids are ranked in descending order (column 9, lines 57-59).

Claim 6:

The Ausubel '383 '383 patent shows, in figures 1-4 and related text, announcing the selected auction parameters (column 6, lines 15-27; collecting and recording bids containing (column 6, lines 63-65): the identity of the bidder (column 6, lines 63-65); quantity bid for (column 7, line 1) pricing information (column 6, line 63); and whether bidder will accept partial quantity, according to the procedures selected and announced (column 8, lines 5-7); rejecting nonconforming bids and noting any bid withdrawals (column 7, lines 8-12).

Claim 7:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of sorting and consolidating all at market bids and all price bids other than those less than the reserve price, wherein the price bids are ranked in descending order (column 9, lines 57-59).

Claim 8:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of sorting and consolidating all at market bids and all price bids other than those less than the reserve price, wherein the price bids are ranked in descending order (column 9, lines 57-59).

Claim 9:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of sorting and consolidating all at market bids and all price bids other than those less than the reserve price, wherein the price bids are ranked in descending order (column 9, lines 57-59).

Claim 10:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 11:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue

by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 12:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 13:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 14:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 15:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 16:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated

revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 17:

Ausubel et al. shows processing bids to determine the selling price including the steps of: calculating a starting revenue by multiplying the highest price bid times the number of items wanted; calculating a comparative revenue by multiplying the next highest price bid times the number of items wanted by both the highest and next highest bidders; determining from the calculated revenue figures the optimum selling price and number is units to be sold to realize the maximum revenue (section 3, pages 5-8).

Claim 18:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations.

Claim 19:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 20:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of

determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 21:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 22:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 23:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 24:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 25:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 26:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 27:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 28:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 29:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 30:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 31:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 32:

Ausubel et al. shows the further step of determining if the auction results are to optimized for seller profit rather than revenue, and if so, the step of determining a cost function to be included in subsequent calculations (section 3, page 5).

Claim 33:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of comparing the total number of items available to that required to supply all bidders that bid at or above the optimum selling price to determine if there are additional items available for sale, and if so processing bids made at market (column 9, lines 37-48).

Claim 34:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of comparing the total number of items available to that required to supply all bidders that bid at or above the optimum selling price to determine if there are additional items available for sale, and if so processing bids made at market (column 9, lines 37-48).

Claim 35:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of comparing the total number of items available to that required to supply all bidders that bid at or above the optimum selling price to determine if there are additional items available for sale, and if so processing bids made at market (column 9, lines 37-48).

Claim 36:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of processing at market bids to determine if there are sufficient items available to

supply all the at market demand, and if not, further comprising the step of applying the selected prorationing scheme (column 7, lines 40-46).

Claim 37:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of processing at market bids to determine if there are sufficient items available to supply all the at market demand, and if not, further comprising the step of applying the selected prorationing scheme (column 7, lines 40-46).

Claim 38:

The Ausubel '383 patent shows, in figures 1-4 and related text, the step of processing at market bids to determine if there are sufficient items available to supply all the at market demand, and if not, further comprising the step of applying the selected prorationing scheme (column 7, lines 40-46).

Claim 39:

Ausubel/Ausubel '383 show a method of using a computer system and a communications network for facilitating a transaction between at least one seller and at least one buyer, including the steps of: submitting a sales offer for items to be sold (column 6, lines 15-17); submitting at least one price bid from at least one buyer (column 6, lines 63-65); determining from the submitted bids a sales price to reach the maximum profit (column 7, lines 25-45); and selling items to the buyers offered a bid price which is equal or higher than the determined sales price, wherein the items are sold to said buyers for the same sales price (column 7, lines 40-43). Ausubel/Ausubel '383 do not specifically disclose that the intent

of the method is to maximize revenue and profit. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the Vickrey-type auction techniques to maximize profit and revenue because that is the goal of any rational business strategy.

In addition, the combination of Ausubel/Ausubel '383 does not specifically disclose *selling items to the buyers who offered a bid price which is equal to or higher than the determined sales price, wherein the items are sold to said buyers for the same sales price*. Dutch Auction Glossary, however, discloses this limitation. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Ausubel/Ausubel '383 and modify it to incorporate the Dutch auction techniques because this ensures that the seller receives at least the minimum value for auctioned goods, and the buyer pays no more than is necessary.

Claim 40:

The Ausubel '383 patent shows, in figures 1-4 and related text, sorting the submitted bids from high to low based on the respective bid prices (column 9, lines 57-59); generating a sequence of cumulated bid quantities (column 9, lines 41-43). The Ausubel '383 patent fails to explicitly show multiplying each element of said sequence of cumulated bid quantities and the respective bid amount to generate to sequence of bid revenues and selecting the highest revenue from the sequence to determine the respective bid price as the sales price. Ausubel et al. shows, in an analogous art related to Vickrey auctions with reserve pricing,

multiplying each element of said sequence of cumulated bid quantities and the respective bid amount to generate to sequence of bid revenues; and selecting the highest revenue from the sequence to determine the respective bid price as the sales price (section 3, pages 5-8). It would have been obvious to one of skill in the art at the time of the invention to include the method of maximizing revenue of Ausubel et al. into the auction of the '383 patent because traditional Vickrey auctions, as implemented in the '383 patent, suffer from small revenues in cases where competition is weak (Ausubel, page 2, paragraph 1).

Claim 41:

The Ausubel '383 patent shows, in figures 1-4 and related text, at market bids are accepted, comprising the step of comparing the total number of items available to that required to supply all bidders that bid at or above the optimum selling price to determine if there are additional items available for sale, and if so processing bids made at market (column 7, lines 35-46).

Claim 42:

Ausubel et al. shows determining a cost profile and including the cost profile in the calculation to generate a sequence of bid profits selecting the highest profit to determine the sales price (section 3, pages 5-8).

Claim 43:

Ausubel et al. shows determining a cost profile and including the cost profile in the calculation to generate a sequence of bid profits selecting the highest profit to determine the sales price (section 3, pages 5-8).

Claim 44:

The Ausubel '383 patent shows, in figures 1-4 and related text, shows determining a prorationing scheme (column 7, lines 40-46); processing at market bids to determine if there are sufficient items available to supply all the at market demand, and if not, further comprising the step of applying the selected prorationing scheme (column 7, lines 40-46).

Art Unit: 3621

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **James A. Reagan** whose telephone number is **(703) 306-9131**. The examiner can normally be reached on Monday-Friday, 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **James Trammell** can be reached at (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**.

Any response to this action should be mailed to:

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Washington, D.C. 20231

or faxed to:

(703) 305-7687	[Official communications; including After Final communications labeled "Box AF"]
(703) 308-1396	[Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

JAR

15 December 2002


JAMES P. TRAMMELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600